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C O N F I D E N T I A L SECTION 01 OF 03 SANAA 002021

SIPDIS

STATE FOR NEA/ARP AND OPS CENTER

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TAGS: [PTER](#) [PREL](#) [ASEC](#) [YM](#) [COUNTER](#) [TERRORISM](#)

SUBJECT: YEMEN: A TALE OF TWO (TERRORISM) TRIALS

REF: A. SANAA 1636

[1](#)B. 03 SANAA 2454

Classified By: Ambassador Thomas Krajewski for reasons 1.4 (b and d).

[1](#)1. (C) Summary: Ongoing trials for 15 al-Qa'ida associates (Trial One) and the USS Cole (Trial Two) defendants are expected to end in the last week of August. While Trial One has been chaotic and presided over by an ineffective judge, the USS Cole trial exemplifies effective U.S.-Yemen cooperation. U.S. presence and cooperation in the trial has been conducted according to traditional Yemeni roles for victims' families in the courts. Post expects both Judges to issue their decisions by mid to late September. The appeals process could take six to twelve months. Post will work with PA and FBI to create appropriate press guidance and carefully monitor the security situation closer to the announcement of the sentences. End summary.

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Trial One: A Judge Overwhelmed  
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[1](#)2. (C) On the first day of the trial of 15 terror suspects accused in the Limburg bombing and planning of attacks on U.S. and other Western diplomats, Judge Ahmed al-Jarmouzi was forced to appoint lawyers for the defendants, quell the spirited responses of families and manage a courtroom unsuited for a high-profile trial (ref A). While some improvements were made in courtroom organization and security, the trial remains disorganized. At times, the defendants shouted in unison, "No God but God and Usama Bin Laden is God's beloved," "America is the enemy of God," and "We want bin Laden as our only leader, no one else will satisfy us." Al-Jarmouzi repeatedly ordered the defendants to stop their shouting and leave the courtroom, but often relented and kept the defendants in the courtroom. At one point during Trial One, prosecutors Saeed Aql and Ali Samet (who are also prosecuting the USS COLE trial) walked out of the proceedings because al-Jarmouzi did not silence the chants. Al-Jarmouzi also failed to effectively manage defense attorneys who have left the proceedings three times to protest the refusal of the judge to provide them with photocopies of evidentiary files. According to Yemeni law, defense attorneys may have access to, but not copies of evidence. The Minister of Human Rights recently made statements in support of the defense attorneys right to have access to the files.

[1](#)3. (U) The defendants are all believed to be al-Qa'ida associates and are charged with involvement in:  
-- the 9/02 explosion in an al-Qa'ida safehouse in the al-Qadissiya neighborhood of Sanaa where 13 crates of explosives were found;  
-- the 10/02 M/V Limburg bombing;  
-- the 11/02 Hunt Oil Company helicopter attack;  
-- the al-Qa'ida cell rolled up in fall 2003 with plans to target the U.S., British, French and Cuban Embassies.

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USS COLE Trial: Expanded Use of Evidence  
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[1](#)4. (C) In contrast to the chaotic atmosphere of Trial One, Judge Nagib al Qadari quickly established order in the USS COLE trial. Qadari is the same judge who sentenced Aden Abya Islamic Army Chief, Abdul Hasan al-Mihdar, to death for the 1998 hostage taking that resulted in the deaths of three western tourists. In July, Qadari fined the defense attorneys 2,000 Riyals (21 USD) for repeatedly asking for photocopies of the evidentiary files and claiming that they could not proceed with the case without the information in question. In what the Legatt's office characterized as a fair decision, Judge Qadari ruled he would provide photocopies of the material on a case-by-case basis. However, defense attorney al-Anisi still insists on receiving complete copies of files and said he would appeal the case based on the judge's ruling. Qadari dismissed al-Anisi from the courtroom. To date, al-Anisi has not returned to the trial.

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The Defense: Conspiracy, Emotion and Little Proof  
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15. (C) Defense attorneys al-Anisi, al-Samawi and al-Alawi are the primary defense attorneys for both trials. Basing his cases on emotion, al-Anisi often directs arguments towards the journalists rather than refuting state's evidence. (Note: President Saleh appointed al-Anisi as Sheikh Mohammed al-Moayed's defense attorney. In November 03, al-Moayed was extradited from Germany to the United States and presently is awaiting trial on charges of supporting al-Qa'ida. Al-Anisi received his visa on 8/18 and is making preparations for travel to the U.S. End note). Al-Samawi, who spent 33 years in Parliament, uses conspiracy theories involving other alleged perpetrators in an attempt to prove the innocence of his clients.

16. (C) In Trial One the three defense attorneys have offered no rebuttal and instead focused on their claims for full access to evidence. Their USS COLE defense can best be summarized as follows:

- How could Yemenis blow up a huge, powerful American ship?
- The explosives used in the operation (RDX/TNT) are only made in Israel and America, therefore Yemenis could not be responsible.
- Taliban/al-Qa'ida forbid the use of video cameras on religious grounds, therefore Yemenis trained in Afghanistan by al-Qa'ida could not have video taped an operation. (This defense argument received laughter in the courtroom).
- The ROYG is prosecuting these suspects because they are unable to produce the real culprit.

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The Prosecution: A Barrage of Evidence  
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17. (C) Lead prosecutor Agel and his deputy Samet are prosecuting methodically built cases based on evidence from investigations, lab reports and confession statements. Samet gained experience in terrorist cases prosecuting al-Mihdar under Judge Qadari. While both cases are gaining positive reviews in the official press, al-Agel and Samet have received threats and are under 24/7 surveillance. Near the end of June, a grenade was thrown at Agel's house burning his car. Steady, but at times uneven, cooperation between Legatt and ROYG greatly contributed to what one local newspaper called the prosecution's "barrage of evidence" implicating the USS COLE suspects.

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Justice, Yemeni Style  
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18. (C) Prior to these two trials, terrorism cases were investigated by the Political Security Organization (PSO), who either handed defendants over to Supreme Court Judge al-Hitar for dialogue (ref A), or were turned over to the Prosecutor General for trial. If the case went to trial, the prosecution initiated a new investigation. Since the prosecution rarely had access to PSO files and could not conduct new investigations, government efforts usually relied on confessions for conviction. In the ongoing terrorism trials, FBI representatives helped the prosecution develop stronger indictments and provided support in understanding ways to link evidence producing tighter cases. Legatt believes the USS COLE trial is the first time DNA evidence will be used in a Yemen court of law. At times, FBI cooperation helped ROYG investigators identify connections and develop new leads as Yemeni investigators had little experience building evidentiary based cases.

19. (C) American presence at the trials is based on the traditional role of the victim's families in the Yemeni Judicial system. Justice Department representatives have acted as family spokespersons and made clear that any assistance provided to the ROYG falls under their role as advocates for the family. Legatt advises that future cooperation in Yemeni terrorism trials be characterized in this manner.

10. (C) Attorney General al-Olafy asked Legatt, as representatives for the families, to stand in court and recommend a sentence for the USS COLE trial. In order to avoid the public exposure of Americans speaking at trial, the judge and prosecutor agreed that the Legatt's office could reply via letter. The letter expressed the following:

- The Legatt office is present at the trials to represent the families of the victims.
- The USG expects the defendants to be tried under Yemeni law.
- If the defendants are found guilty, the USG asks that they be punished to the full extent of Yemeni laws.

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What Happens Next?  
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¶11. (C) Both trials are expected to conclude by the last week in August. Most observers believe that the judges will issue their decisions by the end of September. Defense attorney al-Anisi has repeatedly claimed that based on Qadari's decision concerning evidence in the USS COLE trial, he will appeal. Appeals are also likely in Trial One. The appeals could take six-twelve months.

¶12. (C) Comment: Post expects all defendants to be found guilty. Sentences may vary from capital punishment in one or two cases, to a range of prison terms for the rest. Post anticipates increased anti-American sentiment around the time the verdicts and sentences are announced. In preparation, post is developing press guidance and will closely monitor any increased threats. End comment.

KRAJESKI